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# EXPLORATION OF LOCAL GOVERNMENT OPTIONS FOR THE COMMUNITY OF BIG SKY, MONTANA

FINAL REPORT

Prepared by: Local Government Center  
Montana State University Extension  
Bozeman, MT



**Local Government Center**

406.994.6694 | [msulocalgov.org](http://msulocalgov.org)

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# MONTANA STATE UNIVERSITY EXTENSION LOCAL GOVERNMENT CENTER

*Exploration of Local Government Options for the Community of Big Sky, Montana*

*Final Report, May 2018*

## **Executive Summary**

The Big Sky community is searching for a way to increase the coordination among existing entities that serve the area, to enhance the community's ability to plan for the future and to make decisions that represent the views of the residents. After listening to the interests of the Big Sky Chamber board and its executive director, the MSU Extension Local Government Center (LGC) researched the options available to Big Sky under existing laws of the state of Montana.

This report includes a summary of the viable options available with enough detail to allow Big Sky to consider how well each meets the needs and the resources of the community. Pertinent references for each option from Montana Code Annotated, which is the state law, can be found in the attached appendix. The report summarizes the benefits and costs of each option and gives an indication of the amount of time, money, effort and political capital required to implement each. The community of Big Sky must evaluate the various options available to them and determine which is the best match for their needs and the amount of resources they are willing to put into a possible change.

LGC found six realistic possibilities for Big Sky to consider, each with a range of benefits and drawbacks. Three of the six appear to be better options based on feasibility, representation and the level to which they could enhance coordination among community groups.

Montana has a number of other large unincorporated communities facing similar challenges as Big Sky including Lockwood, Gardener, Four Corners, Seely Lake, River Rock subdivision near Belgrade, Cooke City and Bigfork. The optimal time for incorporation for many of these communities may have passed however, the challenges faced by such communities only seem to grow. To that end, the choices that Big Sky makes with regard to addressing its local government challenges may be of great interest to these communities. If Big Sky chooses a solution that requires action by the legislature, these communities may have common interest in working with the legislature to pass laws that help other communities in this situation.

One of the top options the LGC found is the creation of a community council. This is a board used by county commissions to increase communication and coordination with remote, unincorporated communities. A community council would provide a clear way for the county to receive input from the community on key decisions at the county level. They are relatively easy to create and would likely have little political opposition though they only serve in an advisory capacity to the

county commission. Community councils can either be appointed by the county commission or elected by the community.

Another viable option is to create a special district or multi-jurisdictional district for Big Sky with the purpose of coordinating existing services and offering additional services as needed by the community. This district would provide representation, could levy taxes based on the services provided and it is relatively easy to create though it would require significant coordination between Gallatin and Madison Counties. Both community council and special district will need to create an interlocal agreement between both counties that enjoin and unify their purpose, function and operation.

Finally, making some operational changes to the existing Resort Tax district could be a promising strategy for Big Sky. The least disruptive option would be for the Resort Tax district to transition from funding the individual strategic plans or activities of community organizations to a model where the district becomes the leader for community-wide strategic planning and coordination. The district could lead the planning effort and then distribute funds based on that plan. A more challenging option politically would be to go to the legislature to work toward a change to state law to expand the powers of the Resort Tax district to include ordinance power to address community health, safety and welfare.

Three other possibilities that are included in this report are likely less of a fit for Big Sky but are still options to be considered. The first option is to create an additional nonprofit organization to provide the communication and coordination that the Chamber is currently providing for the community. This new nonprofit could employ staff that would be tasked with attending all the various district meetings and communicating among each of the groups. This nonprofit could conduct future planning for the community, but it would lack democratic representation and any participation would be voluntary.

The second option, the creation of a new county for the Big Sky area, may not offer the solution that the community needs as the powers of a county are limited and the challenges of creating a new county are great. One of the most daunting challenges to creating a new county is that the loss of the tax base of the Big Sky area may not be approved by county voters as it may impact their own taxes. Several other challenges to creating a new county exist and would need to be evaluated before proceeding. It may be possible to create a new county utilizing self-government powers that could allow Big Sky the powers it seeks though this kind of structure has not been done before in Montana and would be challenging administratively and financially.

The third option for Big Sky to consider would be to change the powers of Gallatin and Madison counties from general powers to self-government powers which would enable the counties to exercise new powers not prohibited by state law that could address the unique issues faced by the Big Sky community. Adoption of self-government powers enables both counties to retain the Big Sky tax base but would require significant political effort to change the form of government and

significant effort to draft a self-government charter that defined all of the powers desired for each county and for the Big Sky community.

In summary, there are six options available to Big Sky for increasing the functionality of its local government. It is the intent of this report to provide an initial analysis of the various options and the preliminary information that Big Sky needs to take the next step toward a future that facilitates its growth and development into what the community hopes it could be.

## Top Three Options for Big Sky

|  | Authority   | Representation  | How is it Created?   | Funding  |
|--|---|---|--|--|
| <b>Community Council</b>                     | Official subdivision of county government. Advisory to county commission only.  | Board may be elected by voters in district or appointed by commission. Representation is higher with elected board. | County commission can pass an ordinance to create district or people can file a petition to put question on ballot for a vote.       | Funding for community council may be requested from county.  |
| <b>Special/Multi-Jurisdictional District</b> | Districts may employ people, purchase equipment, enter into contracts, receive funds, construct, improve or maintain property and provide grants in support of purpose of district. | Board may be elected by voters in district or appointed by commission. Representation is higher with elected board. | County commission can pass a resolution to create district or people can file a petition to put question on ballot for a vote.       | Districts may levy property taxes to fund services for the district. Amounts collected varies depending on the funding requirements of the district. |
| <b>Resort Tax</b>                            | A resort district may acquire property, make contracts, have employees, issue and repay bonds and “do all acts necessary for the full exercise of its powers.”                      | Board may be elected by voters in district or appointed by commission. Representation is higher with elected board. | Created by petition which leads to a vote.<br><br>Amendments to resort tax must be approved by a majority of electors of the county. | Resort taxes may be used to fund activities in the district allowed in ordinance creating the district.  |



## Other Options for Big Sky

|                               | Authority  | Representation   | Creation  | Funding  |
|-------------------------------|--|--|---|--|
| <b>Nonprofit</b>              | No official authority to make decisions impacting the area.  | The board of directors is not elected in a public election so has low representation.              | Individuals can create a nonprofit in the interest of the community without any permission from the community.  | A nonprofit would need to create its own funding.  |
| <b>New County</b>             | With “self-government powers”, a new county could provide any services or perform any functions not prohibited by law.       | Counties have full representation as they are governed by a board of elected county commissioners. | To create a new county, a petition must be filed and counties giving up land must vote on the question. Size requirement. County seat must be incorporated municipality.  | Counties collect taxes and distribute to the state and use some to operate services they are obligated to provide.   |
| <b>Self-government powers</b> | The authority to act/govern on behalf of the unincorporated areas would be determined in the charter and approved by voters. | Representation would be high depending on exactly what was written into the charter.               | Establishing self-government powers can be done through the State’s voter review process which happens next in 2024 or by petition signed by 15% of the county electors putting the issue on the ballot. Counties would need to work together to develop complimentary charters as it relates to Big Sky. | Funding for unincorporated communities could be addressed in the charter developed through the voter review process. |

# Community Council

## Summary

A community council is an elected group of citizens representing an area of the county that can provide focus, leadership and continuity to that area. Community councils help improve communications between the county and unincorporated urbanized areas throughout the county. Councils can disseminate information to citizens and provide a forum for the discussion of local issues such as economic development, housing, land use planning and zoning, infrastructure needs and parks and recreation.

Missoula County has the most experience with community councils in Montana. They use councils to provide a means for local citizens to become more involved and connected by acting as a conduit to provide input and recommendations to the county commissioners. Community councils may also facilitate communication with other local, county, state, federal and tribal government agencies; and with other organizations or individuals regarding matters of concern. To comment on projects or other issues of concern for upper levels of government (state agencies, federal agencies and tribes), councils typically submit a request to the commissioners to make a formal recommendation on behalf of the council.

A community council differs from other community-based organizations because it establishes an official communication link between an area and the Board of County Commissioners. Given that councils are a part of county government, they may recommend to the commissioners the creation of additional governance tools in a particular area such as business or special improvement districts and multi-jurisdictional districts. They can also partner with county agencies to apply for grants and loans for new local initiatives. In Missoula, community councils are encouraged to undertake projects to address issues of local concern that are not necessarily initiated by the commissioners; however, community councils are not a separate legal entity and, as such, cannot enter into contracts or agreements. Councils can partner with county departments and other agencies to enter into contracts or agreements.

Community councils can help build community and find ways for citizens to come together around exciting projects as well as difficult issues. Community councils often embark on discussions that take a significant amount of time and are difficult to work through. A Community council would have the authority, representation and legitimacy to conduct a community-wide planning exercise for future growth and development. Coordination among existing groups and districts is a role that a community council could play in Big Sky. Given that the community council is an arm of the county, they could utilize the resources of both Gallatin and Madison counties to facilitate the planning process.

Once the council is established, its success will depend on participation from a wide array of interests and interaction between citizens that is based on mutual respect. The process for building support can take time and will need continual maintenance.

Community councils are a subdivision of county government and therefore, must comply with all constitutional and statutory provision applicable to public agencies, including but not limited to laws governing open meetings, public participation, records management and retention, code of ethics and nepotism laws.

### **Authority**

Community Councils have the duty and responsibility to:

- Serve in a purely advisory capacity with no power to levy taxes or to impose its will on the citizens of the area.
- Facilitate communication with and among boards that govern community infrastructure.
- Communicate regularly with the citizens of the community by any and all means deemed necessary and desirable in order to obtain comments and suggestions regarding issues of concern to the community.
- Provide a transparent and open public forum for citizens that provides an unbiased discussion of all sides of community issues.
- Follow, and attend as needed, meetings of the commissioners and other county boards and commissions and any other meetings at which issues of importance to the community will be discussed.
- Be familiar with bylaws.
- Keep a record of all Council acts and of all monies received and disbursed.

### **Representation**

Community councils must be created by ordinance of the county commission. The council must consist of at least three members who are elected by the voters in that district. The term of office of elected council members may not exceed four years and shall be established when the form is adopted by the voters or commissioners as defined in 7-3-417(2), Montana Code Annotated (MCA).

### **Creation**

Community councils are established by local governments and adopted by voters or authorized by the county commission through the creation and passing of an ordinance. Council members are elected from within the voting district. The creation of community councils is guided by 7-1-201, MCA. The statute detailing community councils for counties operating under both the Elected County Officials form (Gallatin County) and the commission form of government (Madison County), can be found in 7-3-417(2), MCA.

## **Funding**

No funds are specifically allocated in statute to community councils; however, counties may allocate funds to the councils for operations. Councils are not legal entities, so they may not enter into contracts or apply for grant funds on their own although they may work with another organization or another department of the county to seek outside funding. Use of any funds must follow county purchasing requirements.

## **Special and Multi-Jurisdictional Districts**

### **Summary**

Special districts and multi-jurisdictional districts are units of local government that are authorized by law to perform a single function or a limited number of functions such as managing the collection and disposal of solid waste for an area or to administer a business improvement district. While special and multi-jurisdictional districts are very similar in form and function, special districts have a broader array of powers. If Big Sky decided to pursue this option, it would be most advantageous to create identical special districts in Madison and Gallatin counties and then link them with an “interlocal” agreement. The district(s) could work on coordinating the efforts of all the other districts, conduct community-wide strategic planning and could levy funds to further the interests and needs of the district. In addition, the district can create a framework of subcommittees to focus on program areas identified in the resolution or petition creating the district.

It will be important for the community and commissioners from both counties to spend the necessary time to create a thoughtful purpose statement when creating the district. The purpose statement will define the services, functions and relationships of the district.

Counties can create special districts at any time by resolution adopted by the commission or by a vote on the question as a result of a petition by residents of the area. Madison and Gallatin Counties would need to work closely together to develop the size, purpose, powers, financing and administration of such a district for Big Sky.

Special districts are very common in Montana and are used to manage local services such as park districts, fair districts, local improvement districts and road districts. There are several hospital multi-jurisdictional districts scattered around the state though in general, multi-jurisdictional districts are less common in Montana. Common purposes for multi-jurisdictional districts is the creation of hospital districts and joint refuse disposal districts. One pioneering multi-jurisdictional district is the North Montana Joint Refuse Disposal District which is a solid waste district created in 1990 to serve the Cities of Choteau, Conrad and Cut Bank and the rural residents of Glacier, Pondera, Teton and Toole Counties. These local governments collaborated to create one shared

solid waste facility rather than building one in each jurisdiction. The district owns equipment, has employees and collects a fee for service from each residence in the district.

### **Authority**

Special districts have the authority to accomplish the following (7-11-10, MCA):

- a) implement a program and order improvements for the special district designed to fulfill the purposes of the special district;
- b) employ personnel directly related to the specific improvement or program;
- c) purchase, rent, or lease equipment, personal property, and material necessary to develop and implement an effective program;
- d) cooperate or contract with any corporation, association, individual, or group of individuals, including any agency of federal, state, or local government, in order to develop and implement an effective program;
- e) receive gifts, grants, or donations for the purpose of advancing the program and, by gift, deed, devise, or purchase, acquire land, facilities, buildings, and material necessary to implement the purposes of the special district;
- f) construct, improve, and maintain new or existing facilities and buildings necessary to accomplish the purposes of the special district;
- g) provide grants to private, nonprofit entities as part of implementing an effective program;
- h) adopt a seal and alter it at the entity's pleasure;
  - a. administer local ordinances as appropriate;
  - b. establish district capital improvement funds pursuant to [7-6-616](#), MCA, maintenance funds, and debt service funds; and
- i) borrow money by the issuance of:
  - a. general obligation bonds as authorized by the governing body pursuant to Title 7, chapter 6, part 40, and the appropriate provisions of Title 7, chapter 7, part 22 or 42, MCA; or
  - b. revenue bonds for the lease, purchase, and maintenance of land, facilities, and buildings and the funding of projects in the manner and subject to the appropriate provisions of Title 7, chapter 7, part 25 or 44, MCA.

The services that a multijurisdictional service district may provide are (7-11-1102, MCA):

- a) recreation programs other than park and recreation programs in a county park district established under Title 7, chapter 11, part 10, MCA;
- b) road, street, and highway maintenance;
- c) libraries;
- d) jails;
- e) dog control programs;
- f) ambulance service;
- g) dispatch service;

- h) protection of human health and the environment, including scenic concerns and recreational activities for areas requiring or involving environmental reclamation;
- i) health services and health department functions; and
- j) maintenance or provision of any public infrastructure facility, project, or service.

Special and multi-jurisdictional districts must be administered and operated either by the county commission or a separate elected or appointed board as determined by the county commission. If an elected or appointed board is established, the county commission retains ultimate authority over the district (7-11-1021, MCA).

As an administrative board, the special districts will have greater autonomy and decision-making authority than a community council whose authority is advisory only.

### **Representation**

Multi-jurisdictional districts are governed either by the county commission or by a separate board of elected or appointed board members. Though representation is not specifically spelled out in the law, an elected board would provide direct community representation rather than a board appointed by the county commission.

### **Creation**

Special and multi-jurisdictional districts are authorized to levy property taxes and spend those funds on the operation of the district (7-11-112, MCA). Properties in the district may be assessed in a variety of ways depending on the funding requirements of the district and how the services of the district benefit the properties or individuals in the district (7-11-1024, MCA).

## **Resort Tax**

### **Summary**

Big Sky currently has a resort tax district that levies a sales tax that is used to fund infrastructure for the area. The Big Sky Resort Tax District is the only government body that includes all parts of the Big Sky community in its borders. The resort tax district's powers are limited to the collection and spending of the resort tax rather than governing powers necessary to regulate close community living.

Big Sky could consider two modifications to its Resort Tax board's operations so it better fits the growing needs of the community. The least intrusive change would be to modify the focus of the Resort Tax district from funding the strategic planning efforts of other organizations to leading the charge on engaging the Big Sky community to create a community-wide long-term plan and focusing its funding to support those projects that align with the plan for the community. Another

change to consider would be to approach the legislature to make a change in the state law governing resort area tax districts to provide broader legislative powers. This would be significantly more difficult, but the effort may be welcome by other communities around Montana that could benefit from similar changes to the law.

### **Authority**

A resort area district may acquire property, make contracts, have employees, issue and repay bonds. Included in the list of powers for a resort area district is the statement that it may “do all acts necessary for the full exercise of its powers”. To learn the specific nature of these powers, 7-6-1542 (1(b), MCA provides a narrow description to include adopting administrative ordinances necessary to aid in the collection or reporting of resort taxes and in the expenditure of resort tax revenue.

A compelling case could be made to the legislature arguing resort districts be allowed more legislative powers, similar to municipalities. These powers could include the adoption, amendment and repeal of ordinances and resolutions required to preserve peace and order and secure freedom from dangerous or noxious activities; secure and promote the general public health and welfare; provide any service or perform any function authorized or required by state law; and exercise any power granted by state law.

Currently, six of the ten Montana resort tax areas exist in unincorporated communities with limited powers to manage their own local affairs. Incorporation in these areas may not be feasible. County government lacks the power and authority to address issues created in resort communities. By expanding the resort tax area board’s powers, many local issues can be dealt with on the local level that more precisely reflect local needs and values. Examples of ordinance powers not delegated to counties but resort tax area communities may need include a noise ordinance, parking ordinance and speed limits on certain county roads.

### **Representation**

The five members of the resort area district board are elected by the people living in the area. If there are not enough candidates to fill the board seats, existing board members appoint people to fill the open seats. If there is a vacancy on the board, existing board members appoint someone to the vacant seat after the board votes on the potential board member and the person wins at least a majority of the votes of the existing board members. The sense of representation goes down with each appointed board member.

### **Creation**

The establishment of a resort area for the purpose of imposing a resort tax may be initiated by a written petition to the board of county commissioners of the county in which the area is located. The petition must contain a description of the proposed resort area and must be signed by at least fifteen percent of the qualified electors of the proposed resort area. The petition must include a proposal to impose a resort tax within the proposed resort area, including the rate, duration,

effective date, and purpose of the tax. Upon receiving a petition to establish a resort area, the board of county commissioners shall present the question to the qualified electors of the proposed resort area (7-6-15, MCA).

To make any changes to the resort tax, the amendment must be approved by a majority of the qualified electors in the resort area of each county.

### **Funding**

The resort tax district authorizes an additional tax on certain purchases in the resort area. The funds collected may be used to fund activities in the district including administration of the resort tax district.

## **Nonprofit**

### **Summary**

A nonprofit organization could be formed with the sole purpose of increasing communication among and coordinating activities of the various governmental and non-profit organizations that serve the Big Sky Area. Staff of the nonprofit could attend each meeting of the various organizations and inform all organizations of the activities of the others.

This nonprofit would have little to no authority to govern but could be a powerful force in convening the various activities of the region and it could be tasked with collecting public opinion regarding the many changes that impact the quality of life in the area as well as developing a comprehensive community-wide plan for the future. Nonprofit organizations are nimble and accomplish many things.

### **Authority**

A nonprofit organization would have little or no official authority to make decisions impacting the area. The organization would serve primarily as a communication and coordinating organization for entities serving the Big Sky area.

Unlike a special district board or other governmental subdivision, a nonprofit is not required to comply with the constitutional and statutory laws like meeting notice, open meetings and records, Montana code of ethics and citizen participation laws.

### **Representation**

A nonprofit organization would not have the same representation powers as a publicly elected government board. The nonprofit could increase its sense of representation by holding public elections to its governing board and by operating in a transparent manner similar to other government boards operating under the public information laws of the State of Montana.



## **Creation**

Creating a new nonprofit organization requires organizing documents including articles of incorporation and bylaws, acquiring a Federal Employer Identification Number and completing an application with the Internal Revenue Service. Consulting with an attorney to complete the steps for creating a nonprofit is recommended.

## **Funding**

A nonprofit organization would need to create its own funding. Options include membership fees, donations or grant funding through the Resort Tax district and other sources.

# **Creating a New County**

## **Summary**

A new county has not been created in Montana since 1924 when Petroleum County was created from Fergus and Garfield Counties, however, Montana state law allows for the creation of Counties and the process is clearly defined in law.

Creating a new county may not meet all Big Sky's needs as the purpose of a county government is to deliver state services locally and to enforce state law rather than address complicated issues arising from community living. Montana law allows for a county to adopt either general government powers or self-government powers. General government powers, which is what Madison and Gallatin County have, allow a county to exercise only those powers expressly granted by the law and Constitution. Whereas, self-government powers allow a county to exercise any power that is not prohibited by the law or Constitution which would provide flexibility and opportunity for the Big Sky community.

If Big Sky were to pursue creating a new county with self-government powers, it would be creating something entirely new in Montana as only a few counties in Montana have sought self-government powers and none of them have exercised many of those powers. With self-governing powers, a county could have broader policymaking and ordinance powers that would make it more responsive to emerging opportunities and flexible to changing situations.

Although fifty-three of Montana's fifty-six counties operate with the commission form of government, if a new county were to be created, it could choose a form of government that would suit its modern-day needs including providing for law enforcement, creating and enforcing nuisance laws and running its own public utilities. It would be our recommendation to propose the adoption of the Commissioner –Manager form of government. This form consists of an elected commission and a manager appointed by the commission, who is the chief administrative

officer of the local government. The manager is responsible to the commission for the administration of all local government affairs placed in the manager's charge by law, ordinance, or resolution. Instead of electing the many public officers commonly found in the Commission form of government, these positions would be filled through a competitive hiring process based on knowledge, skill and experience.

Creating a new county for the Big Sky area will have an impact on the tax revenues for both Gallatin and Madison Counties. This strategy may present challenging political implications that will need to be addressed between the Big Sky community and the residents of both counties. However, administratively, both county governments would be relieved of the challenge of providing services in the Big Sky area which is geographically separated from the center of operations in both counties. In addition, excluding Big Sky could further complicate Gallatin County's service to West Yellowstone. Discussions may lead to the inclusion of West Yellowstone in the proposed new county.

Creating a new county for the Big Sky area will require an incorporated municipality to serve as its county seat. This requirement will put pressure on the community of Big Sky to either incorporate into a municipality or include either Ennis or West Yellowstone in the boundaries of the new county. If this is the case, then there is little to be gained by creating a new county as Big Sky will continue to be governed "off-site" and the challenges faced today will be the same tomorrow.

### **Authority**

Counties with general powers, which is the default in Montana, are authorized to interpret and apply state law only. Counties can expand their powers by changing their form of government to include self-governing powers which would include the ability to provide any services or perform any functions not expressly prohibited by law. When a county has self-governing powers, it can adopt a charter form of government. A charter is similar to a local constitution defining the plan of government, powers of the legislative, executive and judicial branches of government as well as other elected or appointed offices and create a court system. Only three counties currently operate with self-governing powers and a charter form of government, but their expanded powers have been rarely used. Drafting a charter would allow the community to customize its powers and authorities that are unique to the Big Sky area. This would be an interesting solution for the future governance of the area if the residents of both Gallatin and Madison Counties are willing to release the region from its current tax rolls.

### **Representation**

Counties have full representation as they are governed by an elected county commission. The minimum number of commissioners required by law is three, however, depending on the form of

government adopted, a greater number could be agreed upon as well as the length of terms of office.

## **Creation**

Creation of a new county is allowed for by the state of Montana as described in title 7, Chapter 2, MCA. The law outlines certain criteria that may create physical and political challenges for Big Sky to overcome.

To make the new county, a petition must be created and signed by at least fifty percent of registered electors of the territory that would be included in the new county. When land from two counties are to be made into a new county, a petition must be created in each county and signed by more than fifty percent of the electors in each county to be made into the new county. The county commission of the county that would be giving up the largest amount of land is authorized to make decisions on the petitions for all counties giving up land to the proposed new county.

The petition to create a new county must include details about the land to be included in the new county, the land left in the original county and numerous other details of the proposed change which are fully described in title 7, Chapter 2, MCA. Petitions must be approved by the election administrator prior to gathering signatures. The completed petition must be filed with the elections administrator within one hundred and twenty days of approval of the petition.

Once the completed petition is filed, the clerk of the commission will schedule a hearing on the petition within thirty days of the filing of the completed petition. MCA contains several additional requirements for the formatting of the petition and the information required from each person signing the petition which is included in the appendix (7-2-22, MCA).

Citizens may file a protest petition to exclude some of the territory identified to be included in the new county if it is all in one piece and contiguous to the old county. Protest petitions must contain signatures of at least fifty percent of registered voters in the territory that they wish to exclude from the new county.

Following the validation of the signatures on the petition for a new county, the county commission must call for an election on the question of establishing the new county. All electors in the counties giving up land to the proposed new county will have the opportunity to vote on the question. The ballot will also include the election of officers for the new county and the selection of the county seat of the new county. If the election fails to get more than fifty percent of the votes in favor of the new county, all "proceedings" by the county on the matter of creating a new county must cease for four years (7-2-2222, MCA).

If the election is successful, the county commission must file a copy of the resolution it passed certifying the election with the Secretary of State. The new county is considered to be fully created ninety days after the resolution was filed with the Secretary of State. The organization of

the county as described in the petition is considered complete and any new county officers are entitled to assume the duties of their offices (7-2-2223, MCA).

The details of separating the counties and setting up a new county is detailed in 7-2-223, MCA including the process of separating debt incurred by old counties school districts, roads, tax collections and the courts.

And finally, creating a new county for the Big Sky area reveals a few geographic and legal challenges that may only be solved by an act of the state legislature or by modifying the land included or excluded in the plan for the new county. State law requires that a new county have a county seat, and county seats may only be incorporated municipalities or a “village [that] shall have been regularly platted and a plat thereof filed in the office of the county clerk and recorder and there be fifty qualified electors residing within the boundaries of such platted village.”(7-2-2103, MCA) If the Big Sky area does not qualify as being “regularly platted”, it could include Ennis or West Yellowstone into the new county and name it as their county seat to comply with state law. Another potential challenge is the requirement that the border of a new county must not come within fifteen miles of an existing county seat which may be an issue with regard to Virginia city depending on how far west the border for the new county is desired (7-2-2213, MCA). A final challenge is the minimum requirements for land for the new county. Montana law says that the minimum amount of land that can be taken from one county and added to another is forty-nine square miles of surveyed area. Further, a new county may not be formed that contains less than two hundred and fifty square miles of surveyed land, exclusive of all forest reserve land or Indian reservations not open for settlement (7-2-2201, MCA). Additional research and discussion is required to decide if the wishes of Big Sky comply with existing state law and if not, the willingness of the community to lobby for changes to the law given the political challenges the new county would face with the electorate of Madison and Gallatin counties.

## **Funding**

All counties collect taxes and distribute some to the state and use some to operate the services it is obligated to provide for its residents. A new county would do the same though it would have the additional burden of working with the old counties to allocate debt from previous projects, ownership of equipment and other assets.

## **Self-Government Powers**

Adopting self-government powers in Madison and Gallatin Counties may be a way to allow Big Sky to increase its ability to govern its area. Self-government powers enables counties to define their own powers, structures, privileges, rights and duties. In Montana, general powers is the default form of government for counties which includes Gallatin and Madison Counties. Counties with general powers are limited to enforcing state laws and are dependent on the state legislature to define their county government structure, their roles and responsibilities and scope of authority.

Self-government powers enables counties to expand the scope of local governing authority to include any powers, functions, services and structures not prohibited by state law. A county would need to define what powers it would want to adopt and document them in a carefully considered written charter, which is similar in nature to a federal or state constitution.

To benefit the community of Big Sky, both Madison and Gallatin counties would need to adopt matching self-government powers during Montana's next voter review process which begins in 2024. The counties would need to draft a detailed charter and agree on provisions for Big Sky. Residents of each county would need to vote on the charter for it to be adopted.

Accomplishing this change of form of government could be quite challenging politically however, it would enable both counties to retain the tax revenue of the Big Sky area while relieving some of the burden of service to the Big Sky area by creating some mechanisms for self-government.

### **Authority**

The authority to act on behalf of the Big Sky community would be determined in the charter and approved by the voters. The exact authority to be given would depend on what was written into the charter.

### **Representation**

Representation could be high depending on exactly what was written into the charter.

### **Creation**

Changing the form of government for Madison and Gallatin Counties can only be done through the voter review process which happens every ten years. Madison and Gallatin Counties would need to work together well in advance of the voter review cycle to develop complementary charters as it relates to Big Sky. The counties would need to agree on what they would like the Big Sky community to be able to do on their own and how that would be managed. Nothing like this exists in Montana at this time, so Big Sky would be creating something entirely new with this process. Numerous other communities would likely take interest in this process as there are many other unincorporated places around the state that are in a similar situation as Big Sky.

A significant amount of education of the public would need to be done to inform them of the benefits of changing the form of government as the entire electorate of each county would vote on the charter.

**Funding**

Funding would be determined by the charter developed through the voter review process.

# APPENDIX





## Appendix

### General References to Montana Code Annotated (MCA)

#### 7-1-201. Boards.

- (1) A board of county commissioners **may by resolution** establish the administrative boards, districts, or commissions allowed by law or required by law to be established pursuant to 7-1-202, 7-1-203, Title 7, chapter 11, part 10, and this section and listed in 7-1-202. The resolution creating an administrative board, district, or commission must specify:
  - (a) the number of administrative board, district board, or commission members;
  - (b) the terms of the members;
  - (c) whether members are entitled to mileage, per diem, expenses, and salary; and
  - (d) any **special qualifications** for membership in addition to those established by law.
- (2)
  - (a) An administrative board, a district board, or a commission may be assigned responsibility for a department or service district.
  - (b) An administrative board, a district board, or a commission may:
    - i. **exercise administrative powers as granted by resolution**, except that it may not pledge the credit of the county or impose a tax unless specifically authorized by state law; and
    - ii. **administer programs, establish policy, and adopt administrative and procedural rules.**
  - (c) **The resolution creating an administrative board**, a district board, or a commission **must grant the administrative board, district board, or commission all powers necessary and proper to the establishment, operation, improvement, maintenance, and administration of the department or district.**
  - (d) **If authorized by resolution**, an administrative board, a district board, or a commission **may employ personnel to assist in its functions.**
- (3)
  - (a) An administrative board, a district board, or a commission **may be made elective.**
  - (b) If an administrative board, a district board, or a commission is made elective, the election must be conducted as provided in Title 13, chapter 1, part 5.
  - (c) A vacancy created pursuant to 2-16-501 occurring during a term must be filled for the unexpired term by the county commissioners. The member appointed to fill the vacancy holds the office until a successor has been elected and qualified.
- (4) An administrative board, a district board, or a commission may not sue or be sued independently of the local government unless authorized by state law.
- (5)
  - (a) If administrative board, district board, or commission members are to be appointed, the members must be appointed by the county commissioners. The county commissioners shall post prospective membership vacancies at least 1 month prior to filling the vacancy. A vacancy created pursuant to 2-16-501 occurring during a term must be filled for the

unexpired term by the county commissioners. The member appointed to fill the vacancy holds the office until a successor has been appointed and qualified.

- (b) The county commissioners shall maintain a register of appointments, including:
- i. the name of the administrative board, district board, or commission;
  - ii. the date of appointment and confirmation, if any is required;
  - iii. the length of term;
  - iv. the name and term of the presiding officer and other officers of each administrative board, district board, or commission; and
  - v. the date, time, and place of regularly scheduled meetings.
- (c) Terms for members of elected or appointed boards or commissions may not exceed 4 years. Unless otherwise provided by resolution or as provided in 7-11-1010, members shall serve terms beginning on July 1 and shall serve at the pleasure of the county commissioners.
- (6) An administrative board, a district board, or a commission must consist of a minimum of 3 members and must have an odd number of members.
- (7) The resolution creating an administrative board, a district board, or a commission may provide for voting or nonvoting ex officio members.
- (8) Two or more local governments may provide for a joint administrative board, district board, or commission to be established by interlocal agreement.
- (9) A majority of members constitutes a quorum for the purposes of conducting business and exercising powers and responsibilities. Action may be taken by a majority vote of members present and voting unless the resolution creating the board, district, or commission specifies otherwise.
- (10) An administrative board, a district board, or a commission shall provide for the keeping of written minutes, including the final vote on all actions and the vote of each member.
- (11) An administrative board, a district board, or a commission shall provide by rule for the date, time, and place of regularly scheduled meetings and file the information with the county commissioners.
- (12) Unless otherwise provided by law, a person must be a citizen of the United States and a resident of the county to be eligible for appointment to an administrative board, a district board, or a commission. The county commissioners may prescribe by resolution additional qualifications for membership.
- (13) A person may be removed from an administrative board, a district board, or a commission for cause by the county commissioners or as provided by resolution.
- (14) A resolution creating an administrative board, a district board, or a commission must contain, if applicable, budgeting and accounting requirements for which the administrative board, district board, or commission is accountable to the county commissioners.
- (15) If a municipality creates a special district in accordance with Title 7, chapter 11, part 10, the governing body of the municipality shall comply with this section if the governing body chooses to have the special district governed by a separate board.

History: En. Sec. 1, Ch. 543, L. 1995; amd. Sec. 1, Ch. 254, L. 1999; amd. Sec. 22, Ch. 286, L. 2009; amd. Sec. 16, Ch. 49, L. 2015; amd. Sec. 2, Ch. 307, L. 2017; amd. Sec. 1, Ch. 372, L. 2017.

**7-1-202. Creation of new boards.** Subject to 7-1-201 and 7-1-203 and in addition to the following, a county may create administrative boards, districts, and commissions that are not otherwise provided for by law:

- (1) county building commission;

- (2) cemetery districts;
- (3) county fair commission;
- (4) mosquito control board;
- (5) museum board;
- (6) board of park commissioners;
- (7) road district;
- (8) rodent control board;
- (9) solid waste district;
- (10) television district;
- (11) weed management district.

History: En. Sec. 2, Ch. 543, L. 1995; amd. Sec. 10, Ch. 114, L. 2003; amd. Sec. 23, Ch. 286, L. 2009.

### Attorney General's Opinions

*County Powers Not Inclusive of Legislative Powers — Closing of County Incinerator Considered Administrative Act Not Subject to Initiative and Referendum:* Absent a charter granting self-government powers, a county that exercises only general powers is limited to whatever powers that the Legislature expressly or impliedly grants. Even though the Montana Constitution extends initiative and referendum authority to voters of local government entities, that power is limited to the local government's legislative authorization. Beyond basic corporate powers exercised by a Board of County Commissioners, a general government county functions through administrative boards, districts, and commissions created under specific statutory authority. In this case, Park County created an administrative refuse district and subsequently closed the county-owned incinerator. The closing of the incinerator was subject to the powers of initiative and referendum only if it was within the county's legislative jurisdiction. However, the incinerator closing was an administrative rather than legislative act and thus was not subject to initiative and referendum. 50 A.G. Op. 8 (2004).

*Setting of Compensation for Mosquito Control Board Employees — Approval Required:* A mosquito control board may not set the level of compensation of board employees without the approval of the Board of County Commissioners. 47 A.G. Op. 11 (1998). See also 38 A.G. Op. 35 (1979).

*Setting of Compensation for Weed Control Board Employees — Approval Required:* A weed control board may not set the level of compensation of board employees without the approval of the Board of County Commissioners. 47 A.G. Op. 11 (1998). See also 38 A.G. Op. 35 (1979).

### Community Council

Missoula County has excellent background material regarding Community Councils on their website and in the handbook they created for their Community Council members and communities.

- Missoula County Community Council Webpage:  
<https://www.missoulacounty.us/community/community-councils-copy>
- Missoula County Community Council handbook:  
<https://www.missoulacounty.us/home/showdocument?id=5186>

The statutory basis for Gallatin County's form of government is the Elected County Officials form of government as outlined in MCA 7-3-111. In sub part (h), the law identifies 7-3-417(2) as the county's default sub option for community councils. This statute provides the authority for Gallatin County to

create community councils by ordinance to advise the commission. Although Madison County operates with the exact same sub option, their statutory foundation for doing so is slightly different.

Madison County adopted the Commission form of government and selected sub option 2 as their default option for community councils. Although each County's form of government allows them to create community councils by ordinance to advise the commission, their underlying authority is different. This nuance is worth mentioning as it highlights a difference between the two Counties and how they may initiate the process for changing the sub options of their plan of government.

**7-3-417. Size of commission and community councils.** The size of the commission, which shall be a number not less than three, shall be established when the form is adopted by the voters, and:

(1) community councils of at least three members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at large shall district according to population for the purpose of electing community councils; or

**(2) community councils to advise commissioners may be authorized by ordinance.**

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(2)(f). (BOLD ADDED)

## Special Districts

**7-11-1001. Purpose.** The purpose of this part is to allow for the creation and governance of special districts.

History: En. Sec. 1, Ch. 286, L. 2009.

**7-11-1002. Definitions.** As used in this part, the following definitions apply:

(1) "Governing body" means the legislative authority of a local government.

(2) "Local government" means a city, town, county, or consolidated city-county government or any combination of these acting jointly.

(3)

(a) "Special district" means a unit of local government that is authorized by law to perform a single function or a limited number of functions.

(b) The term includes but is not limited to cemetery districts, museum districts, park districts, fair districts, solid waste districts, local improvement districts, mosquito control districts, multijurisdictional districts, road districts, rodent control districts, television districts, and districts created for any public or governmental purpose not specifically prohibited by law. The term also includes any district or other entity formed to perform a single or limited number of functions by interlocal agreement.

(c) The term does not include business improvement districts, cattle protective districts, conservancy districts, conservation districts, water and sewer districts, planning and zoning districts, drainage districts, grazing districts, hospital districts, irrigation districts, library districts, livestock protective committees, parking districts, resort area districts, rural improvement districts, special improvement districts, lighting districts, rural fire districts, street maintenance districts, tax increment financing districts, urban transportation districts, water conservation and flood control projects, and weed management districts.

History: En. Sec. 2, Ch. 286, L. 2009.

**7-11-1003. Authorization to create special districts.**

- (1) Whenever the public convenience and necessity may require:
  - (a) the governing body may:
    - i. create a special district by resolution; or
    - ii. order a referendum on the creation of a special district to serve the inhabitants of the special district as provided in 7-11-1011; or
  - (b) petitioners may initiate the creation of a special district to serve inhabitants of the special district as provided in subsection (2).
- (2)
  - (a)
    - i. Upon receipt of a petition to institute the creation of a special district that is signed by at least 25% of the registered voters or by the owners of at least 25% of the real property within the boundary of the proposed special district and that is submitted to the clerk of the governing body, the governing body shall order a referendum on the creation of the special district pursuant to 7-11-1011.
    - ii. Upon receipt of a petition to institute the creation of a special district that is signed by more than 50% of the registered voters or by the owners of more than 50% of the real property within the boundary of the proposed special district, the governing body shall conduct a public hearing pursuant to 7-11-1007. Following the hearing and if insufficient protests are made as provided in 7-11-1008, the governing body shall order the creation of the special district in accordance with 7-11-1013.
  - (b) If a proposed special district would be financed by a mill levy, a petition to institute the creation of the special district must be signed by at least 40% of the registered voters or at least 40% of the property taxpayers within the boundary of the proposed district.
  - (c) The form of the petition may be prescribed by the governing body, and the clerk of the governing body shall verify the signatures on the petition.
  - (d) Subject to subsection (2)(c), the petition must:
    - i. require the printed name of each signatory;
    - ii. specify whether the signatory is a property taxpayer or owner of real property within the proposed special district and either the street address or the legal description, whichever the signatory prefers, of that property;
    - iii. describe the type of special district being proposed and the general character of any proposed improvements and program to be administered within the special district;
    - iv. designate the method of financing any proposed improvements or maintenance program within the special district;
    - v. include a description of the areas to be included in the proposed special district; and
    - vi. specify whether the proposed special district would be administered by the local governing body or an appointed or elected board.
- (3) Within 60 days of receipt of a petition to create a special district, the clerk of the governing body shall:
  - (a) certify that the petition is sufficient under the provisions of subsection (2) and present it to the governing body at its next meeting; or

- (b) reject the petition if it is insufficient under the provisions of subsection (2).
- (4) A defect in the contents of the petition or in its title, form of notice, or signatures may not invalidate the petition and subsequent proceedings as long as the petition has a sufficient number of qualified signatures attached.

History: En. Sec. 3, Ch. 286, L. 2009; amd. Sec. 1, Ch. 171, L. 2013.

**7-11-1011. Referendum — conduct of election on creating special district.**

- (1) The governing body may order a referendum on the creation of the proposed special district.
- (2) The resolution ordering the referendum must state:
  - (a) the type and maximum rate of the initial proposed assessments or fees that would be imposed, consistent with the requirements of 7-11-1007(2)(e) and 7-11-1024;
  - (b) the type of activities proposed to be financed, including a general description of the program or improvements;
  - (c) a description of the areas included in the proposed special district; and
  - (d) whether the proposed special district would be administered by the governing body or an appointed or elected board.
- (3) The election must be conducted in accordance with Title 13, chapter 1, part 5.
- (4) The proposition to be submitted to the electorate must read: "Shall the proposition to organize (name of proposed special district) be adopted?"
- (5) An individual is entitled to vote on the proposition if the individual:
  - (a) is a registered elector of the state; and
  - (b) is a resident of or owner of taxable real property in the area subject to the proposed special district.
- (6) If the proposition is approved, the election administrator of each county shall:
  - (a) immediately file with the secretary of state a certificate stating that the proposition was adopted;
  - (b) record the certificate in the office of the clerk and recorder of the county or counties in which the special district is situated; and
  - (c) notify any municipalities lying within the boundaries of the special district.

History: En. Sec. 7, Ch. 286, L. 2009; amd. Sec. 5, Ch. 171, L. 2013; amd. Sec. 115, Ch. 49, L. 2015.

**7-11-1021. Governance — powers and duties.**

- (1) A special district must be administered and operated either by the governing body or by a separate elected or appointed board as determined by the governing body.
- (2)
  - (1) If the special district is governed by a separate board, the board must be established in accordance with Title 7, chapter 1, part 2, except as provided in 7-11-1010, and specific powers and duties granted to the board and those specifically withheld must be stated.
  - (2) A vacancy created pursuant to 2-16-501 occurring during a term must be filled for the unexpired term by the governing body. The member appointed to fill the vacancy holds the office until a successor has been appointed and qualified.
  - (3) The governing body may grant additional powers to the board. This includes the authorization to use privately contracted legal counsel or the attorney of the governing

body. If privately contracted counsel is used, notice must be provided to the attorney of the governing body.

(4) The governing body has ultimate authority under this subsection (2).

- (3) The entity chosen to administer the special district, as provided in subsection (1), may:
- (a) implement a program and order improvements for the special district designed to fulfill the purposes of the special district;
  - (b) employ personnel directly related to the specific improvement or program;
  - (c) purchase, rent, or lease equipment, personal property, and material necessary to develop and implement an effective program;
  - (d) cooperate or contract with any corporation, association, individual, or group of individuals, including any agency of federal, state, or local government, in order to develop and implement an effective program;
  - (e) receive gifts, grants, or donations for the purpose of advancing the program and, by gift, deed, devise, or purchase, acquire land, facilities, buildings, and material necessary to implement the purposes of the special district;
  - (f) construct, improve, and maintain new or existing facilities and buildings necessary to accomplish the purposes of the special district;
  - (g) provide grants to private, nonprofit entities as part of implementing an effective program;
  - (h) adopt a seal and alter it at the entity's pleasure;
  - (i) administer local ordinances as appropriate;
  - (j) establish district capital improvement funds pursuant to 7-6-616, maintenance funds, and debt service funds; and
  - (k) borrow money by the issuance of:
    - i. general obligation bonds as authorized by the governing body pursuant to Title 7, chapter 6, part 40, and the appropriate provisions of Title 7, chapter 7, part 22 or 42; or
    - ii. revenue bonds for the lease, purchase, and maintenance of land, facilities, and buildings and the funding of projects in the manner and subject to the appropriate provisions of Title 7, chapter 7, part 25 or 44.
- (4) If the special district is administered by a separate board, the board shall submit annual budget and work plans to the governing body for review and approval.
- (5) The right to exercise eminent domain pursuant to 70-30-102 is limited to cemetery districts.

#### **7-11-1022. Multiple jurisdictions.**

- (2) A special district created by a combination of local governments acting together must be administered according to an interlocal agreement. The interlocal agreement may determine whether the administrative body of the special district consists of the entire membership of all governing bodies from the participating jurisdictions or representatives of each governing body or jurisdiction.
- (3) A special district created by a combination of local governments acting together may enlarge an existing service district, but may not supersede or void an existing contract, district, or interlocal agreement under which the same service is currently provided to residents of one or more of the

participating jurisdictions. The local governments acting together may agree to alter an existing contract, district, or interlocal agreement as necessary.

- (4) The local governments shall proportionally share the ownership of real or personal property acquired by the district pursuant to their interlocal agreement.

**History: En. Sec. 13, Ch. 286, L. 2009.**

**7-11-1024. Financing for special district.**

- (1) **The governing body shall make assessments or impose fees for the costs and expenses of the special district based upon a budget proposed by the governing body or separate board administering the district pursuant to 7-11-1021.**
- (2) For the purposes of this section, "assessable area" means the portion of a lot or parcel of land that is benefited by the special district. The assessable area may be less than but may not exceed the actual area of the lot or parcel.
- (3) The governing body shall assess the percentage of the cost of the program or improvements:
  - (a) against the entire district as follows:
    - i. each lot or parcel of land within the special district may be assessed for that part of the cost that its assessable area bears to the assessable area of the entire special district, exclusive of roads, streets, avenues, alleys, and public places;
    - ii. if the governing body determines that the benefits derived from the program or improvements by each lot or parcel are substantially equivalent, the cost may be assessed equally to each lot or parcel located within the special district without regard to the assessable area of the lot or parcel;
    - iii. each lot or parcel of land, including the improvements on the lot or parcel, may be assessed for that part of the cost of the special district that its taxable valuation bears to the total taxable valuation of the property of the district;
    - iv. each lot or parcel of land may be assessed based on the lineal front footage of any part of the lot or parcel that is in the district and abuts the area to be improved or maintained;
    - v. each lot or parcel of land within the district may be assessed for that part of the cost that the reasonably estimated vehicle trips generated for a lot or parcel of its size in its zoning classification bear to the reasonably estimated vehicle trips generated for all lots in the district based on their size and zoning classification;
    - vi. each lot or parcel of land within the district may be assessed based on each family residential unit or one or more business units; or
    - vii. any combination of the assessment options provided in subsections (3)(a)(i) through (3)(a)(vi) may be used for the special district as a whole; or
  - (b) based upon the character, kind, and quality of service for a residential or commercial unit, taking into consideration:
    - i. the nature of the property or entity assessed;
    - ii. a calculated basis for the program or service, including volume or weight;
    - iii. the cost, incentives, or penalties applicable to the program or service practices; or
    - iv. any combination of these factors.



- (4) If property created as a condominium is subject to assessment, each unit within the condominium is considered a separate parcel of real property subject to separate assessment and the lien of the assessment. Each unit must be assessed for the unit's percentage of undivided interest in the common elements of the condominium. The percentage of the undivided ownership interest must be as set forth in the condominium declaration.

History: En. Sec. 15, Ch. 286, L. 2009; amd. Sec. 14, Ch. 262, L. 2015.

#### **7-11-1102. Services that may be provided.**

- (1) A multijurisdictional service district may provide only those services that are authorized to be provided by local governments.
- (2) The services that a multijurisdictional service district may provide are:
- (a) recreation programs other than park and recreation programs in a county park district established under Title 7, chapter 11, part 10;
  - (b) road, street, and highway maintenance;
  - (c) libraries;
  - (d) jails;
  - (e) dog control programs;
  - (f) ambulance service;
  - (g) dispatch service;
  - (h) protection of human health and the environment, including scenic concerns and recreational activities for areas requiring or involving environmental reclamation;
  - (i) health services and health department functions; and
  - (j) maintenance or provision of any public infrastructure facility, project, or service.

History: En. Sec. 2, Ch. 425, L. 1985; amd. Sec. 8, Ch. 425, L. 1985; amd. Sec. 1, Ch. 193, L. 1991; amd. Sec. 1, Ch. 116, L. 1993; amd. Sec. 1, Ch. 114, L. 1997; amd. Sec. 8, Ch. 459, L. 1997; amd. Sec. 3, Ch. 86, L. 1999; amd. Sec. 26, Ch. 286, L. 2009.

### Resort Tax District

#### **7-6-1501. Definitions. As used in this part, the following definitions apply:**

- (1) "Board of directors" means the board of directors of the resort area district.
- (2) "Luxuries" means any gift item, luxury item, or other item normally sold to the public or to transient visitors or tourists. The term does not include food purchased unprepared or unserved, medicine, medical supplies and services, appliances, hardware supplies and tools, or any necessities of life.
- (3) "Medical supplies" means items that are sold to be used for curative, prosthetic, or medical maintenance purposes, whether or not prescribed by a physician.
- (4) "Medicine" means substances sold for curative or remedial properties, including both physician prescribed and over-the-counter medications.
- (5) "Qualified elector" means a person who is qualified to vote under 13-1-111 and is a resident of a resort community, resort area, or proposed or established resort area district.
- (6) "Resort area" means an area that:
- (a) is an unincorporated area and is a defined contiguous geographic area;
  - (b) has a population of less than 2,500 according to the most recent federal census;

- (c) derives the major portion of its economic well-being from businesses catering to the recreational and personal needs of persons traveling to or through the area for purposes not related to their income production; and
  - (d) has been designated by the department of commerce as a resort area prior to its establishment by the county commissioners as provided in 7-6-1508.
- (7) "Resort area district" means a district created under 7-6-1532 through 7-6-1536, 7-6-1539 through 7-6-1544, 7-6-1546 through 7-6-1548, and 7-6-1550 that has been established as a resort area under 7-6-1508.
- (8) "Resort community" means a community that:
- (a) is an incorporated municipality;
  - (b) has a population of less than 5,500 according to the most recent federal census;
  - (c) derives the primary portion of its economic well-being related to current employment from businesses catering to the recreational and personal needs of persons traveling to or through the municipality for purposes not related to their income production; and
  - (d) has been designated by the department of commerce as a resort community.

History: En. Sec. 1, Ch. 729, L. 1985; amd. Sec. 1, Ch. 549, L. 1991; amd. Sec. 1, Ch. 554, L. 1995; Sec. 7-6-4461, MCA 1995; redes. 7-6-1501 by Code Commissioner, 1997; amd. Sec. 1, Ch. 381, L. 2009; amd. Sec. 80, Ch. 49, L. 2015.

### Attorney General's Opinion

#### *Organization of Municipality Within Resort Area Allowed — Expenditure of Resort Tax Revenue:*

A municipality may be organized within the boundaries of a resort area or resort area district. The incorporation of a municipality within the boundaries of a resort area does not alter the boundaries of the area, exclude property that is within the municipality from the resort tax, or preclude expenditure of the area resort tax revenue for expenses or projects within the municipality. 53 A.G. Op. 1 (2009).

### **7-6-1541. General powers of resort area district.**

- (1) A resort area district may:
- (a) have perpetual succession;
  - (b) **sue and be sued** in any court of competent jurisdiction;
  - (c) **acquire** by any legal means **real and personal property** necessary to the full exercise of its powers;
  - (d) **make contracts, employ labor, and do all acts necessary for the full exercise of its powers; and**
  - (e) issue and repay bonds as provided in 7-6-1542.
- (2)
- (a) Subject to subsection (2)(b), the board of directors for a resort area district that does not have perpetual succession may submit the question of extension of the term of the resort area district directly to the qualified electors in an election conducted in accordance with Title 13, chapter 1, part 5. If the electorate extends the term of the resort area district, the provisions of this part continue to apply.
  - (b) The board of directors may not submit a question to the qualified electors to extend the term of a resort area district until the expiration of at least one-half of the existing term of the resort tax, as provided for in 7-6-1504. If a vote to extend the term fails, successive votes to extend the term may be taken no more than once each year.

(3) The board of directors shall exercise the powers described in 7-6-1533 through 7-6-1536, 7-6-1539 through 7-6-1544, 7-6-1546 through 7-6-1548, and 7-6-1550.

History: En. Sec. 11, Ch. 327, L. 1997; amd. Sec. 1, Ch. 393, L. 2005; amd. Sec. 2, Ch. 232, L. 2013; amd. Sec. 91, Ch. 49, L. 2015.

## Nonprofit Organizations

The following is from the Internal Revenue Service website regarding the life cycle of an Exempt organization (<https://www.irs.gov/charities-non-profits/life-cycle-of-an-exempt-organization>):

Organizations that meet the requirements of Internal Revenue Code section 501(a) are exempt from federal income taxation. In addition, charitable contributions made to some section 501(a) organizations by individuals and corporations are deductible under Code section 170.

This website provides information about points of intersection between organizations and the IRS. The content includes explanatory information, and links to forms that an organization may need to file with the IRS. The materials cover five stages in an organization's life cycle:

1. **Starting Out:** Creating an organization under state law, acquiring an employer identification number, and identifying the appropriate federal tax classification.
2. **Applying for Exemption:** Acquiring, completing, and submitting application forms; how the IRS processes applications; and getting help from the IRS during the application process.
3. **Required Filings:** Annual exempt organization returns, unrelated business income tax filings, [Form 9976 – Notice of Intent to Operate Under Section 501\(c\)\(4\)](#), and other returns, reports and notices that an organization may have to file.
4. **Ongoing Compliance:** How an organization can avoid jeopardizing its tax-exempt status, disclosure requirements, employment taxes, and other ongoing compliance issues.
5. **Significant Events:** Audits, private letter rulings, and termination procedures.

Life Cycle pages are available for the following types of organizations:

- [Charitable organizations](#) (Code section 501(c)(3))
  - [Public charities](#)
  - [Private foundations](#)
- [Social welfare organizations](#) (section 501(c)(4))
- [Agricultural/horticultural organizations](#) (section 501(c)(5))
- [Labor organizations](#) (section 501(c)(5))
- [Business leagues \(trade associations\)](#) (section 501(c)(6))

### **35-2-126. Designation of status of nonprofit corporations.**

- (1) A domestic corporation must be designated as either a public benefit, mutual benefit, or religious corporation. The specific designation of a corporation is as follows:
  - (a) A corporation designated by its articles of incorporation as a public benefit corporation, a mutual benefit corporation, or a religious corporation is the type of corporation designated by its articles of incorporation.
  - (b) A corporation that is not designated by its articles of incorporation as a public benefit corporation, a mutual benefit corporation, or religious corporation is the type of corporation designated in the annual report filed in 1995.
- (2) A foreign corporation must be designated as either a foreign public benefit, foreign mutual benefit, or foreign religious corporation. The specific designation of a corporation is as follows:
  - (a) A foreign corporation designated by its articles of incorporation as a public benefit corporation, mutual benefit corporation, or religious corporation is the type of foreign corporation designated by its articles of incorporation.
  - (b) A foreign corporation not designated as provided in subsection (2)(a), but designated in its application for a certificate of authority, or any amendments of the application, as a public benefit corporation, mutual benefit corporation, or religious corporation is the type of foreign corporation it designated in its application for a certificate of authority.
  - (c) A foreign corporation not designated as provided in subsection (2)(a) or (2)(b) is the type of corporation it designated in the annual report filed in 1995.

History: En. Sec. 16, Ch. 411, L. 1991.

## Creating A New County

### **7-2-2201. Authorization to create new counties.**

- (1) New counties may be formed and created in this state from portions of one or more counties that must have been created and in existence for a period of more than 2 years, in the manner provided in this part.
- (2) Except as provided in Title 7, chapter 2, part 28, a county enlarged by the addition of territory taken from one or more other counties is a new county under the provisions of this part.

History: En. Sec. 1, Ch. 226, L. 1919; re-en. Sec. 4390, R.C.M. 1921; amd. Sec. 1, Ch. 106, L. 1929; re-en. Sec. 4390, R.C.M. 1935; amd. Sec. 6, Ch. 406, L. 1973; R.C.M. 1947, 16-501(part); amd. Sec. 1, Ch. 742, L. 1985; amd. Sec. 11, Ch. 347, L. 2011.

### **7-2-2202. Limitations on creation of new counties.**

- (1) A new county may not be established that reduces any county to an assessed valuation of less than \$12 million, inclusive of all assessed valuation as shown by the last preceding assessment.
- (2) A new county may not be formed that contains an assessed valuation of property less than \$10 million, inclusive of all assessed valuation, as shown by the last preceding assessment of the county or counties from which the new county is to be established.
- (3) A new county may not be established that reduces the area of any existing county from which territory is taken to form the new county to less than 500 square miles of surveyed land, exclusive of all forest reserve and Indian reservations within old counties.

- (4) Except as provided in Title 7, chapter 2, part 28, territory may not be taken from one county and added to another county unless its surveyed area is greater than 49 square miles.
- (5) A new county may not be formed that contains less than 250 square miles of surveyed land, exclusive of all forest reserve land or Indian reservations not open for settlement.

History: En. Sec. 1, Ch. 226, L. 1919; re-en. Sec. 4390, R.C.M. 1921; amd. Sec. 1, Ch. 106, L. 1929; re-en. Sec. 4390, R.C.M. 1935; amd. Sec. 6, Ch. 406, L. 1973; R.C.M. 1947, 16-501(part); amd. Sec. 2, Ch. 742, L. 1985; amd. Sec. 12, Ch. 347, L. 2011.

#### **7-2-2205. Petition for creation of new county — number of signatures required.**

- (1) Whenever it is desired to divide any county or counties and form a new county out of a portion of the territory of the then-existing county or counties, a petition shall be presented to the board of county commissioners of the county from which the new county is to be formed, in case said proposed new county is to be formed from but one county, or to the board of county commissioners of the county from which the largest area of territory is proposed to be taken for the formation of such new county, in case said new county is to be formed from portions of two or more existing counties.
- (2)
  - (a) If the proposed new county is to be formed from a portion of only one existing county, the petition must be signed by at least 50% of the registered electors of the proposed new county.
  - (b) If the proposed new county is to be formed from portions of two or more counties, separate petitions shall be presented from the territory taken from each county, and each of the petitions shall be signed by at least 50% of the registered electors of the proposed portions.
  - (c) If the proposed new county is to be an existing county enlarged by territory taken from one or more other counties, a separate petition must be presented from each such territory, and each petition must be signed by at least 50% of the registered electors of the territory.
- (3) For the purpose of determining the number of signatures needed on a petition to meet the percentage requirements of this section, the number of registered electors in a territory proposed to be included in a new county is the number of people registered to vote in that territory in the most recent general election.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(part); amd. Sec. 264, Ch. 571, L. 1979; amd. Sec. 3, Ch. 742, L. 1985; (3)En. Sec. 6(1), Ch. 742, L. 1985; 7-2-2205(2)(d) (formerly (2)(c)) redes. 7-2-2206(4) by Code Commissioner, 1985.

#### **7-2-2206. Contents of petition — petition approval procedure — deadline for filing signatures.**

- (1) A petition or petitions for creation of a new county must contain:
  - (a) a legal description of the territory proposed to be taken from the county in which the petition is circulated;
  - (b) a general map, on a separate page or pages, that with shaded areas or darkened boundary lines will display to prospective petition signers the general outlines of the territory described in subsection (1)(a);
  - (c) a statement of the assessed valuation of the proposed county as shown by the most recent assessment, inclusive of all assessed valuation;
  - (d) a statement of the surveyed area, in square miles, that will remain in the county or counties from which territory is taken to form the new county after the county is formed; a statement of the surveyed area in square miles that will be in the new county after

- formation; and a statement that the surveyed area of the territory proposed to be transferred is greater than 49 square miles;
- (e) a warning that a person is subject to a \$500 fine or 6 months in jail, or both, if the person purposefully:
    - i. signs a name other than the person's own to the petition;
    - ii. signs more than once for the same issue; or
    - iii. signs when not a legally registered voter residing in the territory to be added to the proposed new county;
  - (f) if the proposed new county is to be formed from one existing county, or from portions of two or more existing counties, the name of the proposed new county and a request that the proposed new county be organized into a new county under the provisions of this part; and
  - (g) if the proposed new county is to be an existing county enlarged by territory taken from one or more other counties, a request that this territory be added to the proposed new county under the provisions of this part.
- (2) Each person shall sign the person's name and address in substantially the same manner as on the person's voter registry card or the signature will not be counted.
- (3) Numbered lines must be provided for signatures. Each numbered line must contain spaces for the signature, the printed last name of the signer, and the signer's address.
- (4) The signatures are not required to all be appended to one paper but may be signed to several petitions, which must be similar in form. When signed, the several petitions may be fastened together and must be treated and presented as one petition.
- (5) Before a petition may be circulated for signatures, a sample petition must be submitted to the county election administrator in the form in which it will be circulated for approval as to form. The county election administrator shall refer a copy of the sample petition to the county attorney, who shall review the sample petition to ensure compliance with the requirements of this part. The county attorney shall cooperate with and provide necessary services to the person who submitted the petition to ensure that an adequate and valid legal description is written for the proposed new county boundaries. If the petition is rejected as to form, the county election administrator shall within 10 days after submission of the sample send written notice to the person who submitted the petition. If the petition is approved as to form, the election administrator shall within 21 days after submission of the sample send written notice to the person who submitted the petition. After that notice, the petition may not be challenged except with regard to the number and validity of signatures appended to it.
- (6) All petition signatures must be collected and filed within 120 days of the date of the notice that the petition has been approved as to form.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(part); amd. Sec. 4, Ch. 742, L. 1985; (4) redes. from 7-2-2205(2)(d) (formerly (2)(c)) by Code Commissioner, 1985; (5)En. Sec. 5, Ch. 742, L. 1985; (6)En. Sec. 6(2), Ch. 742, L. 1985; amd. Sec. 265, Ch. 61, L. 2007.

**7-2-2208. Role of board of county commissioners — intercounty communication.**

- (1) A board of county commissioners receiving a petition pursuant to 7-2-2205 shall be empowered and have jurisdiction to do and perform all acts provided for in this part for each of the several counties from which any proposed territory is to be taken and shall direct that a certified copy of all orders

and proceedings had before such board shall be certified by the county clerk to the board of each of the several counties from which any territory is taken by the proposed new county.

- (2) All officers of any such county shall comply with the orders of the board of county commissioners in the same manner as if said order had been duly made by the board of each respective county from which territory is proposed to be taken.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(part).

#### **7-2-2211. Hearing on petition — protest.**

- (1) At the time fixed for the hearing, the board of county commissioners shall hear the petitioners and any opponents and protestants upon the petition or protests filed on or before the time fixed for the hearing. The board may adjourn the hearing from time to time, but not for more than 10 days after the time fixed for the hearing, and shall receive the proof to establish or controvert the facts set forth in the petition.
- (2)
  - (a) No petition, protest, or petition for the exclusion of territory may be considered unless it is filed at least 1 day before the time fixed for the hearing.
  - (b) A petition for the exclusion of territory shall contain the names of not less than 50% of the registered electors of any territory to be excluded.
  - (c) All such territory being excluded must be in one block containing an area of not less than 36 square miles and be totally within one county and contiguous thereto.
- (3) No withdrawals of signatures to the original petition for the creation of a proposed county shall be filed or considered which have not been filed with the county clerk on or before the date fixed for the hearing. No withdrawals of any signatures from the petition for the exclusion of territory may be received or considered which are not filed within 5 days after the filing of the petition for such exclusion of territory.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(3); amd. Sec. 3, Ch. 250, L. 1979; amd. Sec. 265, Ch. 571, L. 1979.

#### **7-2-2212. Exclusions and additions of territory upon petition.**

- (1) Except as provided in subsection (3), on final hearing, the board of commissioners, upon petition of not less than 50% of the registered electors (as shown by the official registration records on the day of the filing of the petition) of any territory lying within the proposed new county and contiguous to the boundary line of the proposed new county and of the old county from which such territory is proposed to be taken and lying entirely within the single old county and described in the petition, asking that this territory not be included within the proposed new county, must make such changes in the proposed boundaries as will exclude the territory from the new county and shall establish and define the boundaries. Petitions for exclusion shall be disposed of in the order in which they are filed with the clerk of the board.
- (2) Except as provided in subsection (3), on final hearing, the board, upon petition of not less than 50% of the registered electors of any territory lying outside the proposed new county and contiguous to the boundary line of the proposed new county and of the old county or counties from which such territory is proposed to be taken, asking that this territory be included within the proposed new

county, must make such changes in the proposed boundaries as will include such territory in the new county and shall establish and define the boundaries.

(3)

- (a) The segregation of the territory from any old county or counties may not leave the county or counties with less than \$12 million of assessed valuation, based upon the last assessment roll.
- (b) No change or changes so made may result in reducing the valuation of the proposed new county to less than an assessed valuation of \$10 million, inclusive of all assessed valuation.
- (c) No change may be made which leaves the territory so excluded separate and apart from and without the county of which it was formerly a part.

(4) On final determination of boundaries, no changes in the boundaries originally proposed may be made except as prayed for in the petition or petitions or to correct clerical errors or uncertainties.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(5); amd. Sec. 4, Ch. 250, L. 1979; amd. Sec. 266, Ch. 571, L. 1979.

**7-2-2213. Resolution of board of county commissioners.** The board of county commissioners, on the final hearing of the petition or petitions, shall, by a resolution entered on its minutes, determine:

- (1) the boundaries of the proposed new county, and the boundaries determined by the board must be the boundaries of the proposed new county if it is created as provided in this part;
- (2) whether the petition contains the genuine signatures of at least 50% of the registered electors of the proposed new county as required in this part or, in cases where separate petitions are presented from portions of two or more existing counties as required in this part, whether each petition is signed by at least 50% of the registered electors of that portion of each of the existing counties that is proposed to be taken into the proposed new county;
- (3) whether any line of the proposed new county passes within 15 miles of the courthouse situated at the county seat of any county proposed to be divided, except as otherwise provided;
- (4) whether the proposed new county and affected existing counties meet the limitations contained in 7-2-2202;
- (5) the name of the proposed new county as stated in the petition; and
- (6) whether the area embraced within the proposed new county will be reasonably compact.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(4); amd. Sec. 267, Ch. 571, L. 1979; amd. Sec. 7, Ch. 16, L. 1991; amd. Sec. 3, Ch. 128, L. 2011.

**7-2-2215. Election on question of creating new county — proclamation and notice.**

- (1) Within 2 weeks after the determination that the signatures on the petition are valid and sufficient, the board of county commissioners shall order and give notice of an election to be held for the purpose of determining whether the territory proposed to be taken from the county is to be established and organized into a new or enlarged county, for the election of officers, and for the location of a county seat if the vote at the election is in favor of the question.
- (2) The election must be conducted in accordance with Title 13, chapter 1, part 4.
- (3) All registered electors of the county are entitled to vote at the election.



- (4) If the proposed new county is an existing county to be enlarged by territory taken from the county in which the petition was filed, the board of county commissioners of the proposed new county shall also hold an election in the manner described in subsections (1) through (3).

History: En. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R.C.M. 1921; re-en. Sec. 4394, R.C.M. 1935; amd. Sec. 8, Ch. 406, L. 1973; R.C.M. 1947, 16-505(part); amd. Sec. 269, Ch. 571, L. 1979; amd. Sec. 9, Ch. 742, L. 1985; amd. Sec. 1, Ch. 387, L. 1995; amd. Sec. 19, Ch. 49, L. 2015.

**7-2-2103. Qualifications for municipality or village to be county seat.** No city, town, or village shall become the temporary or permanent county seat of any county organized under the provisions of part 22 or created by an act of the legislature unless such city or town shall have been incorporated in the manner provided by law or unless such village shall have been regularly platted and a plat thereof filed in the office of the county clerk and recorder and there be fifty qualified electors residing within the boundaries of such platted village.

History: En. Sec. 1, Ch. 16, Ex. L. 1919; re-en. Sec. 4392, R.C.M. 1921; re-en. Sec. 4392, R.C.M. 1935; R.C.M. 1947, 16-503(part).

**7-2-2221. Determination of county seat — temporary county seat.**

- (1) If the proposed new county is to be formed from one county or from portions of two or more existing counties, the question of the election of the county seat is hereby provided to be submitted to the qualified electors of the proposed new county at the election provided for in 7-2-2215(1), and the majority of all the votes cast therefor shall determine the election thereon.

(2)

- (a) In case any city or town fails to receive a majority of all the votes cast, then the city or town receiving the highest number of all votes cast shall be designated as the temporary county seat. The temporary county seat selected upon the organization of such county shall remain as such county seat until the permanent county seat shall be established as provided by law.
- (b) In case any city or town is not the choice of the election for the county seat by a majority of all the votes cast, the question of choice between the two cities or towns for which the highest number of votes shall have been cast shall be submitted in like manner to the qualified electors at the next general election thereafter.
- (c) When the county seat shall have been selected as herein provided, it shall not thereafter be changed except in the manner provided by law.

- (3) If the proposed new county is to be an existing county enlarged by territory taken from one or more other counties, the question of the election of the county seat may not be submitted to the electors at the election provided for in 7-2-2215.

History: Ap. p. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R.C.M. 1921; re-en. Sec. 4394, R.C.M. 1935; amd. Sec. 8, Ch. 406, L. 1973; Sec. 16-505, R.C.M. 1947; Ap. p. Sec. 1, Ch. 16, Ex. L. 1919; re-en. Sec. 4392, R.C.M. 1921; re-en. Sec. 4392, R.C.M. 1935; Sec. 16-503, R.C.M. 1947; R.C.M. 1947, 16-503(part), 16-505(part); amd. Sec. 14, Ch. 742, L. 1985.

**7-2-2222. Effect of election — resolution by county commissioners.**

- (1) If, upon the canvass of the votes cast at the election, it appears that more than 50% of the votes cast by those voting in an election under 7-2-2215(1) in the county, by those voting in the same election in the territory proposed to be taken from the county, and by those voting in an election held under 7-2-2215(4) are affirmative, the board of county commissioners shall, by a resolution entered upon its minutes:

- (a) declare the new or enlarged county duly formed and created as a county of this state under the name of .... County;
  - (b) if appropriate, declare that the city or town receiving the highest number of votes cast at the election for county seat is the county seat of the county until removed in the manner provided by law; and
  - (c) declare the individuals receiving, respectively, the highest number of votes for the offices to be filled at the election to be duly elected to the offices.
- (2) If upon the canvass it appears that more than 50% of the votes cast on the issue by those voting in the county, by those voting in the territory proposed to be taken from the county, or by those voting in an election held under 7-2-2215(4) are negative, the board canvassing the vote shall pass a resolution in accordance with the vote and the proceedings relating to division of the county or counties must cease. No other proceedings in relation to any other division of the old county or counties may be instituted for at least 4 years after the determination.

History: En. Sec. 4, Ch. 226, L. 1919; re-en. Sec. 4395, R.C.M. 1921; re-en. Sec. 4395, R.C.M. 1935; amd. Sec. 9, Ch. 406, L. 1973; R.C.M. 1947, 16-506(part); amd. Sec. 273, Ch. 571, L. 1979; amd. Sec. 15, Ch. 742, L. 1985; amd. Sec. 5, Ch. 128, L. 2011.

**7-2-2241. Commission to determine and adjust indebtedness and assessments for old and new counties.**

- (1) It shall be the duty of the persons elected to or continuing to hold the office of county commissioner of said new county to meet at the county seat thereof within 5 days after all of them shall have qualified, and upon organization of said board of county commissioners, it shall notify the governor of the state of the organization of said county. Thereupon, it shall be the duty of the governor to appoint three persons, one of whom shall be a resident and a taxpayer within the new county and no two of whom shall be from any one county, to form and be a board of commissioners.
- (2) The proceedings required in 7-2-2244 through 7-2-2246 to be taken in the ascertainment and adjustment of property rights and debts shall be had and taken as between said new county and each of the counties from which territory is taken to form said new county in the manner and at the ratio provided in 7-2-2244 through 7-2-2246.

History: (1)En. Sec. 6, Ch. 226, L. 1919; re-en. Sec. 4397, R.C.M. 1921; re-en. Sec. 4397, R.C.M. 1935; Sec. 16-510, R.C.M. 1947; (2)En. Sec. 7, Ch. 226, L. 1919; re-en. Sec. 4398, R.C.M. 1921; re-en. Sec. 4398, R.C.M. 1935; Sec. 16-511, R.C.M. 1947; R.C.M. 1947, 16-510(part), 16-511(part).

**7-2-2246. Settlement between counties following adjustment of indebtedness.**

- (1) The sum of said ascertained value of the property referred to in 7-2-2245 added to the ascertained proportion of the excess referred to in 7-2-2245 which the new county is to pay the old county and its proportion of the expense of said election, as aforesaid, shall be an indebtedness from the new county to the old county, and the property situated, as aforesaid, in the new county shall upon settlement therefor as provided in this part, become the property of the new county, and the old county shall pay the entire indebtedness against it.
- (2) If, upon the settlement between the old and the new counties, as herein provided for, the new county shall be found to be indebted to the old county or either of the old counties, the money necessary to pay said indebtedness shall be raised by a tax levied upon the property contained in said new county and said new county shall pay the same. Such payment by said new county may be made in not more than three equal annual payments or by funds to be derived from the sale of

bonds of said new county, as may be determined by a resolution of the board of county commissioners of said new county adopted within 1 year after the receipt of the statement from the board of commissioners, as aforesaid, of the amount or amounts due from it.

- (3) If the value of the property belonging to the old county exceeds the indebtedness of the old county, then the old county shall pay to the new county a due proportion of such excess, which proportion shall be determined by the board of commissioners and shall be paid by the old county to the new county in the same manner and subject to the same conditions herein provided for payment by the new county to the old county when the indebtedness of the old county exceeds the value of the property in the old county.

History: En. Sec. 7, Ch. 226, L. 1919; re-en. Sec. 4398, R.C.M. 1921; re-en. Sec. 4398, R.C.M. 1935; R.C.M. 1947, 16-511(part).

## Self-Government Powers

### **Montana Constitution, Section 6. Self-government powers.**

A local government unit adopting a self-government charter may exercise any power not prohibited by this constitution, law, or charter. This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

### **7-1-111. Powers denied. A local government unit with self-government powers is prohibited from exercising the following:**

- (1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;
- (2) any power that applies to or affects the provisions of 7-33-4128 or Title 39, except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;
- (3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;
- (4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of public convenience and necessity pursuant to Title 69, chapter 12;
- (5) any power that establishes a rate or price otherwise determined by a state agency;
- (6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;
- (7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of compliance;
- (8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6 months' imprisonment, or both, except as specifically authorized by statute;
- (9) any power that applies to or affects the right to keep or bear arms, except that a local government has the power to regulate the carrying of concealed weapons;
- (10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

- (11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 as prerequisites to the carrying on of a profession or occupation;
- (12) except as provided in 7-3-1105, 7-3-1222, or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1, or Title 87;
- (13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction.
- (14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;
- (15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage, distribution, use, or application of commercial fertilizers or soil amendments, except that a local government may enter into a cooperative agreement with the department of agriculture concerning the use and application of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or fire codes governing the physical location or siting of fertilizer manufacturing, storage, and sales facilities.
- (16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production, processing, sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or vegetable seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local government from adopting or implementing zoning regulations or building codes governing the physical location or siting of agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or distribution facilities.
- (17) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle, including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;
- (18) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a person who holds an unrevoked and unexpired official amateur radio station license and operator's license, "technician" or higher class, issued by the federal communications commission of the United States;
- (19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles, load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a highway that is under the jurisdiction of an entity other than the local government unit;
- (20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in relation to a wildfire.

History: En. 47A-7-201 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-201; amd. Sec. 3, Ch. 375, L. 1983; amd. Sec. 22, Ch. 418, L. 1995; amd. Sec. 1, Ch. 446, L. 2001; amd. Sec. 1, Ch. 217, L. 2003; amd. Sec. 2, Ch. 466, L. 2003; amd. Sec. 1, Ch. 561, L. 2003; amd. Sec. 2, Ch. 395, L. 2009; amd. Sec. 1, Ch. 56, L. 2013; amd. Sec. 1, Ch. 173, L. 2015; amd. Sec. 7, Ch. 456, L. 2015; amd. Sec. 2, Ch. 274, L. 2017; amd. Sec. 1, Ch. 420, L. 2017.





**EXTENSION**

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